

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

**SUNJET CAR SERVICE, INC.**

Station WPKU901

Brooklyn, New York

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File No. EB-00-TS-016

**NAL/Acct. No. 015NY0001**

**FORFEITURE ORDER**

**Adopted:** March 28, 2000

**Released:** March 29, 2000

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) against Sunjet Car Service, Inc. ("Sunjet") for willful violation of Sections 1.903, 90.135, and 90.425(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve operation on an unauthorized frequency and failure to identify.

2. On October 8, 1999, the Commission's New York, New York, Field Office issued the referenced Notice of Apparent Liability ("NAL") for a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Sunjet for the noted violations.<sup>2</sup> Sunjet filed a response to the NAL on November 7, 1999.

**II. BACKGROUND**

3. Sunjet is licensed to operate private land mobile station WPKU901 from 4913 Snyder Avenue, Brooklyn, New York ("4913 Snyder Avenue") on frequencies 462.1250 and 467.1250 MHz. Sunjet uses Station WPKU901 to dispatch cars.

4. On March 11, 1999, an FCC agent from the FCC's New York Field Office ("agent") investigated a complaint of interference to a private land mobile station operating on frequency 472.7625 MHz in New York, New York. Through electronic direction finding, the agent determined that the source of the interfering signal was a transmitter operated by Sunjet and located at 4913 Snyder Avenue on frequency 472.7625 MHz. During the monitoring period, which was longer than 15 minutes, no identification was transmitted.

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<sup>1</sup> 47 C.F.R. §§ 1.903, 90.135, and 90.425(a).

<sup>2</sup> *Notice of Apparent Liability*, NAL Acct. No. 015NY0001 (Released October 8, 1999).

## Federal Communications Commission

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5. On March 22, 1999, the New York Field Office issued Sunjet a Notice of Non-compliance which alleged violations of Sections 90.113,<sup>3</sup> 90.135, and 90.425(a) of the Rules and requested a response. Having received a certified mail return receipt card signed by Sunjet but no response to the notice, the New York Field Office issued a second letter to Sunjet on April 28, 1999, requesting that Sunjet provide a response to the Notice of Non-compliance. The New York Field Office received a signed return receipt card for the April 28, 1999, letter but did not receive a written response.

6. On May 11, 1999, Mr. Felix Leonardo of Aries Communications, Inc., Sunjet's service contractor, telephoned the New York Field Office on behalf of Sunjet. Mr. Leonardo admitted that Sunjet had received the April 28, 1999, letter and that Sunjet was operating on the frequency 472.7625 MHz, which was not authorized by its license. Mr. Leonardo stated that Sunjet would file an application with the Commission for authorization to operate on that frequency.

7. On July 1, 1999, the New York Field Office received information indicating that Sunjet was still transmitting on 472.7625 MHz. The agent telephoned Mr. Leonardo and asked that Sunjet cease all transmissions on the frequency 472.7625 MHz. Mr. Leonardo assured the agent that Sunjet was operating in accordance with its license. The agent then monitored frequency 472.7625 MHz and electronically traced a signal to 4913 Snyder Avenue, Sunjet's place of business. During the monitoring, the FCC agent noted that the station did not transmit its identification. When the agent returned to the New York Field Office, he telephoned Mr. Leonardo and warned him that Sunjet had to cease all transmissions on the unauthorized frequency 472.7625 MHz or it would face enforcement action.

8. On August 4 and 20 and October 6, 1999, the agent again monitored frequency 472.7625 MHz and electronically traced a signal to 4913 Snyder Avenue. During the monitoring, the FCC agent noted that the station did not transmit its identification. During the monitoring period, which was longer than 15 minutes on each of those days, Station WPKU901 did not transmit its identification.

9. On October 8, 1999, the District Director, New York Field Office, issued the subject NAL to Sunjet for operating on a frequency not authorized by its license, in repeated and willful violation of Sections 1.903 and 90.135 of the Rules and for failure to identify, in repeated and willful violation of Section 90.425(a) of the Rules.

10. On November 7, 1999, the Commission received Sunjet's response to the NAL, in which Sunjet requested cancellation or reduction of the proposed forfeiture. Sunjet asserted that it had relied solely upon its service contractor, which provided Sunjet with "faulty" equipment and assured Sunjet that the notices received from the Commission had been or would be "taken care of." Sunjet also asserted: (1) its failures to identify "may have occurred at a time of heavy radio traffic" when the identification requirements were simply overlooked; (2) the failures to identify "may reflect an overly casual broadcasting procedure," which is "probably common to many stations like Sunjet's"; and (3) any damage resulting from its failures to identify was "minimal" because of the nature of its transmissions, the low power of its transmitter and the fact that most listeners would know who was transmitting without hearing the identification. In addition,

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<sup>3</sup> Effective on February 12, 1999, the station authorization requirement formerly contained in Section 90.113 of the Rules, 47 C.F.R. § 90.113, was moved to Section 1.903 of the Rules. *See Biennial Regulatory Review – Amendments of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027 (1998).

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## Federal Communications Commission

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Sunjet asserted that the proposed \$7,000 forfeiture is excessive in comparison with its gross revenues of less than \$80,000. However, Sunjet did not provide any tax returns or financial statements to support this claim.

### III. DISCUSSION

11. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act<sup>4</sup>, Section 1.80 of the Rules<sup>5</sup>, and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, (rel. Dec. 28, 1999) ("*Policy Statement*"). In examining Sunjet's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

12. Section 1.903 of the Rules provides that stations in the Wireless Radio Services must be used and operated in accordance with a valid authorization granted by the Commission. Section 90.135 of the Rules provides that a change in the frequency of an authorized station requires an application for modification of the station's license. We find that Sunjet's operation on the frequency 472.7625 MHz on March 11, July 1, August 4, August 20, and October 6, 1999, was in repeated and willful violation of Sections 1.903 and 90.135 of the Rules. In addition, Section 90.425(a) of the Rules requires that stations be identified by the transmission of the assigned call sign during each transmission or once every 15 minutes during periods of continuous operation. We find that Sunjet's failures to identify its transmissions on March 11, July 1, August 4, August 20, and October 6, 1999, were in repeated and willful violation of Section 90.425(a) of the Rules.

13. Sunjet cannot escape responsibility for its operation on an unauthorized frequency by blaming its service contractor. Sunjet continued to operate on the frequency 472.7625 MHz without authorization even after receiving many notifications of non-compliance. Therefore, there can be no doubt that Sunjet's unauthorized operation on the unauthorized frequency 472.7625 was willful and repeated.<sup>6</sup> Sunjet tries to minimize the significance of its failures to identify. However, the identification requirement is important because, if identification is given, FCC agents can determine the source of a signal without time-consuming electronic direction finding. In the Sunjet's case, FCC agents were forced electronically to locate the source of unauthorized transmissions on seven occasions. Finally, Sunjet has provided no convincing evidence that reduction or cancellation of the forfeiture based on its inability to pay claim is warranted.

14. We have examined Sunjet's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Sunjet has failed to justify cancellation or reduction of the proposed forfeiture amount. Therefore, we affirm the

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>1</sup> The word "willfully" as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that a licensee knew it was doing the act in question. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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## Federal Communications Commission

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forfeiture of seven thousand dollars (\$7,000). We note that subsequent to the issuance of the NAL, on November 9, 1999, and February 14, 2000, FCC agents again detected apparent operation by Sunjet on an unauthorized frequency, without station identification. Those apparent violations are not addressed here. Further violations may lead to revocation of Sunjet's license.

### IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>7</sup> Sunjet Car Service, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand (\$7,000) for the repeated and willful violation of Sections 1.903 and 90.135 of the Rules concerning unauthorized operation and Section 90.425(a) of the Rules which sets forth the identification requirements.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>8</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 015NY0001. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

17. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to counsel for Sunjet Car Service, Inc., Robert S. Hammer, Esq., 1164 East 21<sup>st</sup> Street, Brooklyn, New York 11210-3618.

### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

<sup>8</sup> 47 U.S.C. § 504(a).